(c) *Due diligence requirements for securitization exposures.* (1) Except for exposures that are deducted from common equity tier 1 capital and exposures subject to § 217.42(h), if a Board-regulated institution is unable to demonstrate to the satisfaction of the Board a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the Board-regulated institution must assign the securitization exposure a risk weight of 1,250 percent. The Board-regulated institution's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) A Board-regulated institution must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average LTV ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (c)(1) of this section for each securitization exposure.

§ 217.42 Risk-weighted assets for securitization exposures.

(a) *Securitization risk weight approaches.* Except as provided elsewhere in this section or in § 217.41:

(1) A Board-regulated institution must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, a Board-regulated institution may assign a risk weight to the securitization exposure using the simplified supervisory formula approach (SSFA) in accordance with §§ 217.43(a) through 217.43(d) and subject to the limitation under paragraph (e) of this section. Alternatively, a Board-regulated institution that is not subject to subpart F of this part may assign a risk weight to the securitization exposure using the gross-up approach in accordance with § 217.43(e), provided, however, that such Board-regulated institution must apply either the SSFA or the gross-up approach consistently across all of its securitization exposures, except as provided in paragraphs (a)(1), (a)(3), and (a)(4) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the Board-regulated institution cannot, or chooses not to apply the SSFA or the gross-up approach to the exposure, the Board-regulated institution must assign a risk weight to the exposure as described in § 217.44.

(4) If a securitization exposure is a derivative contract (other than protection provided by a Board-regulated institution in the form of a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), a Board-regulated institution may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (c) of this section.

(b) *Total risk-weighted assets for securitization exposures.* A Board-regulated institution's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the Board-regulated institution risk weights under §§ 217.41(c), 217.42(a)(1), and 217.43, 217.44, or 217.45, and paragraphs (e) through (j) of this section, as applicable.

(c) *Exposure amount of a securitization exposure*—(1) *On-balance sheet securitization exposures.* The exposure amount of an on-balance sheet securitization exposure (excluding an available-for-sale or held-to-maturity security where the Board-regulated institution has made an AOCI opt-out election under § 217.22(b)(2), a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction) is equal to the carrying value of the exposure.

(2) *On-balance sheet securitization exposures held by a Board-regulated institution that has made an AOCI opt-out election.* The exposure amount of an on-balance sheet securitization exposure that is an available-for-sale or held-to-maturity security held by a Board-regulated institution that has made an AOCI opt-out election under § 217.22(b)(2) is the Board-regulated institution's carrying value (including net accrued but unpaid interest and fees), less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) *Off-balance sheet securitization exposures.* (i) Except as provided in paragraph (j) of this section, the exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, cleared transaction (other than a credit derivative), or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure. For an off-balance sheet securitization exposure to an ABCP program, such as an eligible ABCP liquidity facility, the notional amount may be reduced to the maximum potential amount that the Board-regulated institution could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

(ii) A Board-regulated institution must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA does not apply by multiplying the notional amount of the exposure by a CCF of 50 percent.

(iii) A Board-regulated institution must determine the exposure amount of an eligible ABCP liquidity facility for which the SSFA applies by multiplying the notional amount of the exposure by a CCF of 100 percent.

(4) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under § 217.34 or § 217.37, as applicable.

(d) *Overlapping exposures.* If a Board-regulated institution has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization (such as when a Board-regulated institution provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the Board-regulated institution is not required to hold duplicative risk-based capital against the overlapping position. Instead, the Board-regulated institution may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(e) *Implicit support.* If a Board-regulated institution provides support to a securitization in excess of the Board-regulated institution's contractual obligation to provide credit support to the securitization (implicit support):

(1) The Board-regulated institution must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The Board-regulated institution must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the Board-regulated institution of providing such implicit support.

(f) *Undrawn portion of a servicer cash advance facility.* (1) Notwithstanding any other provision of this subpart, a Board-regulated institution that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advance payments that it may be required to provide under the contract governing the facility.

(2) For a Board-regulated institution that acts as a servicer, the exposure amount for a servicer cash advance facility that is not an eligible servicer cash advance facility is equal to the amount of all potential future cash advance payments that the Board-regulated institution may be contractually required to provide during the subsequent 12 month period under the contract governing the facility.

(g) *Interest-only mortgage-backed securities.* Regardless of any other provisions in this subpart, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(h) *Small-business loans and leases on personal property transferred with retained contractual exposure.* (1) Regardless of any other provision of this subpart, a Board-regulated institution that has transferred small-business loans and leases on personal property (small-business obligations) with recourse must include in risk-weighted assets only its contractual exposure to the small-business obligations if all the following conditions are met:

(i) The transaction must be treated as a sale under GAAP.

(ii) The Board-regulated institution establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the Board-regulated institution's reasonably estimated liability under the contractual obligation.

(iii) The small-business obligations are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632 et seq.).

(iv)(A) In the case of a state member bank, the bank is well capitalized, as defined in 12 CFR 208.43. For purposes of determining whether a state member bank is well capitalized for purposes of this paragraph (h), the state member bank's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations under this paragraph (h).

(B) In the case of a bank holding company or savings and loan holding company, the bank holding company or savings and loan holding company is well capitalized, as defined in 12 CFR 225.2. For purposes of determining whether a bank holding company or savings and loan holding company is well capitalized for purposes of this paragraph (h), the bank holding company or savings and loan holding company's capital ratios must be calculated without regard to the capital treatment for transfers of small-business obligations with recourse specified in paragraph (k)(1) of this section.

(2) The total outstanding amount of contractual exposure retained by a Board-regulated institution on transfers of small-business obligations receiving the capital treatment specified in paragraph (h)(1) of this section cannot exceed 15 percent of the Board-regulated institution's total capital.

(3) If a Board-regulated institution ceases to be well capitalized under 12 CFR 208.43 or exceeds the 15 percent capital limitation provided in paragraph (h)(2) of this section, the capital treatment under paragraph (h)(1) of this section will continue to apply to any transfers of small-business obligations with retained contractual exposure that occurred during the time that the Board-regulated institution

was well capitalized and did not exceed the capital limit.

(4) The risk-based capital ratios of the Board-regulated institution must be calculated without regard to the capital treatment for transfers of small-business obligations specified in paragraph (h)(1) of this section for purposes of:

(i) Determining whether a Board-regulated institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under the Board's prompt corrective action regulations; and

(ii) Reclassifying a well-capitalized Board-regulated institution to adequately capitalized and requiring an adequately capitalized Board-regulated institution to comply with certain mandatory or discretionary supervisory actions as if the Board-regulated institution were in the next lower prompt-corrective-action category.

(i) *N^{th}-to-default credit derivatives*—(1) *Protection provider*. A Board-regulated institution may assign a risk weight using the SSFA in § 217.43 to an n^{th}-to-default credit derivative in accordance with this paragraph (i). A Board-regulated institution must determine its exposure in the n^{th}-to-default credit derivative as the largest notional amount of all the underlying exposures.

(2) For purposes of determining the risk weight for an n^{th}-to-default credit derivative using the SSFA, the Board-regulated institution must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter A) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the Board-regulated institution's exposure to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Board-regulated institution's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the Board-regulated institution's exposure.

(ii) The detachment point (parameter D) equals the sum of parameter A plus the ratio of the notional amount of the Board-regulated institution's exposure in the n^{th}-to-default credit derivative to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one.

(3) A Board-regulated institution that does not use the SSFA to determine a risk weight for its n^{th}-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser*—(i) *First-to-default credit derivatives*. A Board-regulated institution that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 217.36(b) must determine its risk-based capital requirement for the underlying exposures as if the Board-regulated institution synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. A Board-regulated institution must calculate a risk-based capital requirement for counterparty credit risk according to § 217.34 for a first-to-default credit derivative that does not meet the rules of recognition of § 217.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives*. (A) A Board-regulated institution that obtains credit protection on a group of underlying exposures through a n^{th}-to-default credit derivative that meets the rules of recognition of § 217.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The Board-regulated institution also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(*2*) If n-1 of the underlying exposures have already defaulted.

(B) If a Board-regulated institution satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the Board-regulated institution must determine its risk-based capital requirement for the underlying exposures as if the Board-regulated institution had only synthetically securitized the underlying exposure with the n^{th} smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures.

(C) A Board-regulated institution must calculate a risk-based capital requirement for counterparty credit risk according to § 217.34 for a n^{th}-to-default credit derivative that does not meet the rules of recognition of § 217.36(b).

(j) *Guarantees and credit derivatives other than n^{th}-to-default credit derivatives*—(1) *Protection provider.* For a guarantee or credit derivative (other than an n^{th}-to-default credit derivative) provided by a Board-regulated institution that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the Board-regulated institution must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

(2) *Protection purchaser.* (i) A Board-regulated institution that purchases a guarantee or OTC credit derivative (other than an n^{th}-to-default credit derivative) that is recognized under § 217.45 as a credit risk mitigant (including via collateral recognized under § 217.37) is not required to compute a separate counterparty credit risk capital requirement under § 217.31, in accordance with 34(c).

(ii) If a Board-regulated institution cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 217.45, the Board-regulated institution must determine the exposure amount of the credit derivative under § 217.34.

(A) If the Board-regulated institution purchases credit protection from a counterparty that is not a securitization SPE, the Board-regulated institution must determine the risk weight for the exposure according to general risk weights under § 217.32.

(B) If the Board-regulated institution purchases the credit protection from a counterparty that is a securitization SPE, the Board-regulated institution must determine the risk weight for the exposure according to section § 217.42, including § 217.42(a)(4) for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

[Reg. Q, 78 FR 62157, 62285, Oct. 11, 2013, as amended at 78 FR 62288, Oct. 11, 2013]

§ 217.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, a Board-regulated institution must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. A Board-regulated institution that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, a Board-regulated institution must have accurate information on the following five inputs to the SSFA calculation:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due;